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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5228 OF 2001

M/s.Cutwell Cutting Tools
Plot No.J-185, M.I.D.C.,
Bhosari, Pune - 411 026 ... Petitioner

V/s.

Shri Uttam Maruti Gaikwad
r/at Bapu Landge Chawl
Bhosari, Pune - 411 026 ... Respondent

Mr.A.G. Damle for Petitioner
Mr.M.S. Topkar for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **SEPTEMBER 27, 2005**

ORAL JUDGMENT:

. This Petition challenges the award of the Labour Court by which the Respondent has been reinstated with continuity of service and full backwages.

2. It appears that the respondent was employed as a turner in the Petitioner's factory since 1984. According to the Petitioner, the respondent indulged in various acts of misconduct for which his services came to be terminated on 31.8.1986. Thereafter, the Petitioner agreed to permit the Respondent to resume duties and the respondent accordingly reported for work

on 20.2.1987. A show-cause notice was issued to the respondent on 14.3.1987 alleging (1) that he had not achieved the production according to the norms fixed; (2) that he had not returned the centre drills issued to him on 10.3.1987 and (3) that he was habitual late in reporting for duty. Another show-cause notice was issued to him on the next day alleging that he had torn pages from the production register maintained by the company. The third show-cause notice dated 17.3.1987 contained an allegation that out of 11 centre drills which were issued to him between 22.2.1987 and 16.3.1987, the respondent had not returned 8 drills to the Petitioner. Subsequently, two more show-cause notices were issued to him for absence and for other acts of misconduct. On 1.4.1987, an order terminating his services was issued to the respondent in which there was a mention of all the show-cause notices issued to him. Aggrieved by the dismissal order served upon him, the respondent raised a dispute under the Industrial Disputes Act which was admittedly referred for adjudication and registered as Reference (IDA) No.11 of 1988. In the meanwhile, the Petitioner lodged a complaint with the police regarding the theft of eight centre drills. A prosecution was launched against the respondent which ended in his acquittal. The respondent was acquitted on 29.3.1990.

3. After the pleadings were complete, evidence was led by the employer before the Labour Court to prove the charges, since no enquiry had been held prior to dismissing the respondent from service. The Petitioner examined 4 witnesses including the panch witness as well as the Investigating Officer who witnessed the alleged recovery of eight drills from the respondent. One of the witnesses examined by the Petitioner was a watchman who deposed that although he had issued drills to the respondent, the respondent had failed to return the same. This witness has also said that it was a practice in the company not to issue any drills to a workman unless the old drill was returned. According to the Respondent, the entire allegations against him were concocted and it was due to victimisation that the Petitioner had made various allegations against him. The Labour Court after consideration of the evidence before it, has concluded that none of the charges levelled against the Respondent were proved. The Labour Court was of the view that the Petitioner had not been able to prove any of the charges. After considering the judgment of the Criminal Court acquitting the respondent, the Labour Court came to the conclusion that the preponderance of probabilities did not establish the case against the respondent. The Labour Court did not

accept the evidence of the employer that the respondent had committed a theft of the centre drills or misappropriated the same. The charge with respect to the absence also has not been established. As regards the allegation that the respondent had torn off pages from the production register, the Labour Court disbelieved the evidence. According to the Labour Court, the Petitioner had not examined any witness nor the person who complained of the pages having been torn in her presence. The Labour Court on a consideration of the evidence has held that the Petitioner failed to establish the charges and, therefore, has granted reinstatement with continuity of service and full backwages.

4. Mr.Damle, learned Advocate appearing on behalf of the Petitioner, submits that there can be no doubt that the Petitioner had established that the drills were stolen from the establishment by the Respondent. He submits that the Labour Court has erred in not considering this charge only because of the respondent’s acquittal by the Magistrate’s Court. He submits the degree of proof required in the Labour Court to prove a misconduct is different from the degree of proof in the Criminal Court. On a preponderance of probabilities, the learned Advocate submits that the Petitioner has

established the charge of misappropriation of 8 centre drills. With regard to the charge of tearing off pages from the production register, the learned Advocate submits that the Labour Court has erred in concluding that this charge was not proved only because Mangala, the so called eye witness was not examined. He submits that the Court should have considered the fact that the witness Mangala was threatened and, therefore, she could not depose before the Court. The learned Advocate also submits that no sooner the Petitioner issued a show-cause notice alleging that the Respondent had misappropriated the drills, he stopped reporting for duty and therefore the allegation of absence without permission had been proved. Reliance is placed on the judgment of this Court in the case of *Board of Trustees of the Port of Mumbai v/s. Ramesh Rajaram Jadhav*, **2001(3) Bom.C.R. 609** to submit that the very fact that the drills had been recovered from the residence of the respondent established his guilt that he had committed misconduct of misappropriation of the centre drills.

5. On the other hand, Mr.Topkar, appearing on behalf of the Respondent, submits that the Petition itself has become infructuous in view of the fact that the Industrial Court in a complaint filed by the respondent-workman has held that the Petitioner has

committed an unfair labour practice by not implementing the award. At the time when this Petition was admitted, interim relief was granted, staying the award of the Labour Court, upon the Petitioner depositing the backwages. The Petitioner failed to comply with the order. backwages. Accordingly, the complaint had been filed by the respondent under Item 9 of Schedule IV of the MRTU & PULP Act for non-implementation of the award.

6. The Labour Court after appreciating the evidence on record, has rightly found that the services of the Respondent were orally terminated on 23.3.1987 which amounted to an illegal termination of service. No enquiry was held against the respondent for the alleged acts of misconduct. Evidence led before the Labour Court by the Petitioner suffers from many infirmities and does not inspire confidence as correctly concluded by the Labour Court. The Petitioner had failed to prove that the respondent misappropriated the drills. Reliance placed by the Labour Court on the judgment in the criminal Courts cannot be faulted. This is because the Labour Court, besides considering the fact that the Respondent was acquitted has also considered the evidence led before it and has concluded that the preponderance of probabilities do not point to the respondent having committed the misconduct of

misappropriating 8 out of 11 drills issued to him. The submission of the learned Advocate for the Petitioner that the Labour Court ought not to have relied on the judgment of the criminal Court cannot be accepted in the facts and circumstances of the present case. There is evidence on record to show that new tools were issued to a workman only after he returned the old ones. Although there were endorsements made in the registers when tools were issued to the workman, there was no record maintained when such tools were returned to the Petitioner. The Labour Court has, therefore, disbelieved the evidence of the management and held that the misconduct alleged against the workman was not proved.

7. Regarding the tearing of the pages from the production register, the Labour Court has rightly concluded that the Petitioner ought to have examined the eye witness. Although it was found that the pages had been torn off, there was nothing on record to establish that this was due to an act of the respondent. The Labour Court has, therefore, rightly held that the charges have not been proved.

8. The reliance placed by Mr.Damle on the judgment in *Board of Trustees of the Port of Mumbai* (supra) does

not advance the case of the Petitioner. In that matter the workman had confessed to have committed the crime and the articles were recovered from the delinquent. In the facts and circumstances of that case it was held that the misconduct was proved. In the present case, there is no such confessional statement. The evidence led by the Petitioner before the Labour Court falls short of proving the misconduct even if the preponderance of probabilities are considered.

9. In my view, the Labour Court’s award cannot be faulted. There are no infirmities in this award and it must be upheld. Rule is accordingly discharged with costs.